

In the United States District Court
For the Northern District of Texas
Dallas Division

John T. Lamont and Preston	§	
Poulter	§	
Plaintiffs	§	
	§	No. 3:21-cv-1176-K-BN
v.	§	
	§	
Dean Assaf et al.	§	
Defendants	§	

Defendant’s Requested Jury Instructions

Questions and instructions on the standard of review.

Determination of whether the subject matter of a publication is a matter of public concern is a question of law for the court. *Connick v. Myers*, 461 U.S. 138, 148 n.7 (1983).

Because Plaintiffs, having drawn substantial public attention as comic book creators, are “limited purpose public figures” they must prove each element of their claims by “clear and convincing evidence.” This means evidence which produces in the mind of the jury a firm belief or conviction as to the truth of the allegations sought to be established.

Bentley v. Bunton, 94 S.W.3d 561, 597 (Tex. 2002); Tex. Civ. Prac. & Rem. Code Ann. § 27.001 (defining “Matter of public concern” as a statement or activity regarding: a person who has drawn substantial public attention due to the person’s . . . fame, notoriety, or celebrity”); Texas Pattern Jury Charges

2016 ("PJC"), 110.6

PJC 110.2 Question and Instructions on Defamatory

Whether a statement is capable of a defamatory meaning is a threshold question for the court. *Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 114 (Tex. 2000); *Gartman v. Hedgpeth*, 157 S.W.2d 139, 141 (Tex. 1941). Only when the court determines that the language is ambiguous or of doubtful meaning should the jury determine the statement's meaning and effect on an ordinary person. *Hancock v. Variyam*, 400 S.W.3d 59 (Tex. 2013); *Musser v. Smith Protective Services, Inc.*, 723 S.W.2d 653, 655 (Tex. 1987).

QUESTION 1

Did Plaintiffs offer evidence that the Defendant, Dean Assaf broadcast the statement that either of the Plaintiffs are pedophiles?

"Broadcast" means to communicate the matter to a person, other than Plaintiffs, who are capable of understanding its meaning.

Answer "Yes" or "No."

Answer:_____

PJC 110.2

QUESTION 2a

Did the video direct the statement from Question 1 to Plaintiff Mr. Poulter? Yes or No.

Answer "Yes" or "No."

Answer:_____

QUESTION 2b

Did the video direct the statement from Question 1 to Plaintiff Mr. Lamont? Yes or No.

Answer "Yes" or "No."

Answer:_____

If you answered No to either question you must find Mr. Assaf not guilty of defaming that person.

If you answered "Yes" to Questions 2a/2b, for either or both of the Plaintiffs then answer the following questions with respect to that Plaintiff(s).

If you answered "No" to both Questions 2a and 2b, do not answer the following questions and you must find Defendant Ali Assaf NOT GUILTY.

PJC 110.2. The allegedly defamatory statement must be directed at the plaintiff; that is, it must appear that the plaintiff is the person with reference to whom the allegedly defamatory statement was made. Citing *Huckabee v. Time Warner Entertainment Co.*, 19 S.W.3d 413, 429 (Tex. 2000)

QUESTION 3

Would the livestream, in context and as a whole, be reasonably understood by a person of ordinary intelligence as stating as actual fact that a Plaintiff was a pedophile?

Answer "Yes" or "No."

Answer:_____

PJC 110.12

QUESTION 4

Do you find by clear and convincing evidence that at the time Dean Assaf published the livestream he knew or had a high degree of awareness that the livestream would reasonably be interpreted as stating actual fact?

"Clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the jury a firm belief or conviction as to the truth of the allegations sought to be established.

Answer "Yes" or "No."

Answer:_____

PJC 110.14

If you answered “No” you must find Mr. Assaf NOT GUILTY

DAMAGES

If you answered “Yes” to Question 4, then answer the following question.

Otherwise, do not answer the following question.

QUESTION 5

What sum of money, if paid now in cash, would fairly and reasonably compensate Plaintiff for his actual pecuniary loss, if any, that was proximately caused by Plaintiff being called a pedophile?

Consider the elements of damages listed below and none other. Consider

each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately in dollars and cents for damages, if any.

1. For Preston Poulter, past lost sales through Kickstarter:

Answer: _____

2. For Preston Poulter, lost comic book sales through Kickstarter that, in reasonable probability, will be sustained in the future.

Answer:_____

3. For Preston Poulter, past therapy costs.

Answer:_____

4. For Preston Poulter, therapy costs that, in reasonable probability, will be sustained in the future.

Answer:_____

5. For Preston Poulter, past security costs.

Answer:_____

6. For Preston Poulter, security costs that, in reasonable probability, will be sustained in the future.

Answer:_____

7. For John Lamont, past lost sales for not attending conventions and meetings.

Answer:_____

8. For John Lamont, lost sales for not attending conventions and meetings that, in reasonable probability, will be sustained in the future.

Answer:_____

9. For John Lamont, past therapy costs.

Answer:_____

10. For John Lamont, therapy costs that, in reasonable probability, will be sustained in the future.

Answer:_____

PJC 115.34

Respectfully submitted,

/s/ Ali Assaf
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record for Plaintiffs are being served with a copy of this document, via the Court's CM/ECF system on August 14, 2023.

/s/ Ali Assaf